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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 43321
Plaintiff-Respondent,)	
)	Idaho Co. Case No.
v.)	CR-2013-55056
)	
ROBERT WESLEY WARDEN,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF IDAHO**

HONORABLE GREGORY FITMAURICE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Robert Wesley Warden appeals from his judgment of conviction for driving under the influence, entered upon his conditional guilty plea. On appeal, he asserts that the district court lacked jurisdiction over the criminal charge.

Statement Of The Facts And Course Of The Proceedings

Witnesses reported watching Warden drive his pickup truck off of Idaho State Highway 13 and into a gravel pit right-of-way adjacent to the highway, where they had been target shooting. (Trial Tr.,¹ p.34, L.9 – p.36, L.16.) Upon encountering Warden, they realized that he was very intoxicated. (Id., p.36, Ls.11-12; p.44, L.18 – p.46, L.3.) One of the witnesses contacted the police and Officer Remington was dispatched to the scene. (Id., p.43, L.23 – p.44, L.2; p.47, L.8 – p.48, L.4.) Officer Remington contacted Warden and arrested him. (Id., p.48, Ls.5-9.)

The state charged Warden with driving under the influence, enhanced as a felony because he had previously been convicted of felony driving under the influence during the preceding 15 years. (R., pp.25-26.) Warden pleaded not guilty to the charge (R., p.27), and subsequently, though he was represented by counsel, filed a *pro se, ex parte* motion to dismiss claiming that the court lacked jurisdiction because he was a member of the Nez Perce Tribe (R., pp.35-37). Responding to the jurisdictional challenge, the state amended its information to charge Warden with driving *on Idaho State Highway 13* while under the influence, in addition to the prior conviction enhancement. (R., pp.53-

¹ “Trial Tr.” refers to the excerpted transcript found in the clerk’s record of the first day, 4/22/2015, of Warden’s jury trial.

54.) The district court ultimately held a hearing on the motion and denied it. (See Supp. Tr.,² p.6, L.8 – p.18, L.15.)

The case proceeded to trial, but the jury was unable to reach a verdict, and the district court declared a mistrial. (R., pp.154-55; Supp. Tr., p.43, Ls.15-17.) At a status conference hearing the following day, the parties presented a negotiated plea agreement under which the state dismissed the enhancement and amended the charge to a misdemeanor driving under the influence, and Warden entered a conditional guilty plea, reserving his right to appeal his jurisdictional issue. (Supp. Tr., p.43, L.19 – p.45, L.5; p.46, L.19 – p.47, L.25; p.55, L.6 – p.58, L.20.) The district court entered judgment against Warden and imposed a suspended underlying sentence of one year in jail, and placed Warden on probation for a year. (R., pp.164-66.) Warden filed a timely notice of appeal. (R., pp.167-69.)

² Consistent with the clerk's record (see R., pp.185-86), the transcript of motion hearings on 4/4/2014, 4/22/2015, and 4/24/2015 is herein referenced as "Supp. Tr."

ISSUE

Warden states the issue on appeal as:

Did the State prove that the DUI (driving under the influence) occurred upon a highway or road maintained by the county or state, or political subdivisions thereof?

(Appellant's brief, p.8.)

The state rephrases the issue as:

Has Warden failed to show a jurisdictional defect in the amended information, which conferred subject matter jurisdiction upon the district court?

ARGUMENT

Warden Has Failed To Show Any Defect In The Charging Document Fatal To Conferring Subject Matter Jurisdiction Upon The District Court

A. Introduction

During the course of criminal proceedings below, Warden filed several *pro se, ex parte* motions, including a motion to dismiss based on jurisdiction. (See R., pp.35-37.) The district court held a hearing on the motion and, finding that it had jurisdiction, denied Warden's motion. (Supp. Tr., p.18, Ls.4-15.) On appeal, Warden again raises his jurisdictional claims. (Appellant's brief, pp.9-18.) Application of the correct law shows that the district court, in fact, had jurisdiction.

B. Standard Of Review

Whether a court has jurisdiction is a question of law, given free review. State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

C. The Amended Information Filed By The State In This Case Conferred Subject Matter Jurisdiction Upon The District Court

Warden has challenged the subject matter jurisdiction of the district court. (See Appellant's brief.) "The information, indictment, or complaint alleging an offense was committed within the state of Idaho confers subject matter jurisdiction upon the court." State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1133 (2004). In this case, the state filed an amended information which alleged that Warden had violated Idaho Code § 18-8004(1)(a) and 18-8005(9) by driving under the influence of alcohol on Idaho State Highway 13. (R., pp.53-54.) That is sufficient to confer subject matter jurisdiction upon the district court.

On appeal Warden notes that he is an enrolled member of the Nez Perce Tribe (Appellant's brief, p.5), and so asserts that the district court lacked jurisdiction over his crime under Idaho Code § 67-5101 (*id.*, pp.9-18). This argument fails. Idaho Code § 67-5101 governs the jurisdiction of Idaho courts in civil and criminal matters arising in Indian country. Under that statute, and the applicable federal provisions cited therein, the State of Idaho has "assum[ed] and accept[ed]" jurisdiction for matters regarding the "[o]peration and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof." I.C. § 67-5101(G). As shown above, the information filed by the state alleged that Warden drove under the influence on Idaho State Highway 13. (*R.*, pp.53-54.) Even in a case involving a member of an Indian tribe arising in Indian country, as noted above, that is sufficient to confer subject matter jurisdiction upon the district court.

Warden also "asks the Court to make a fact-specific determination that the definition [of 'highways and roads'] should not include the gravel pit area." (Appellant's brief, p.13.) This Court should decline Warden's invitation, first, because the definition is not applicable, either legally or factually, to the question of the trial court's jurisdiction in this case and, second, because whether rights-of-way constitute part of the highway is not a question that requires statutory construction.

First, whether the "gravel pit area" constitutes part of Idaho State Highway 13 has no bearing on this case. The state did not charge Warden with driving in the "gravel pit area"; the state charged Warden with operating his vehicle while under the influence "upon a public highway maintained by the county or state, or political subdivision thereof, to wit: Idaho State Highway 13" (*R.*, p.53), and that is what Warden pleaded

guilty to. After declaring a mistrial following the hung jury at Warden's initial criminal trial, the district court set a status conference for the following day. (Supp. Tr., p.43, Ls.8-17.) Prior to that conference, the parties negotiated a plea agreement under which the state would amend its charge to a misdemeanor excessive DUI and Warden would enter an Alford³ plea, stipulating to the factual basis presented by the state. (Id., p.43, L.19 – p.45, L.5.) At this hearing, the district court asked Warden if he understood that he was charged with "driving on a public road maintained by a public entity or a subdivision of the State of Idaho—State of Idaho or a subdivision of the State of Idaho, that being State Highway 13," while under the influence, with a blood alcohol level greater than 0.20. (Id., p.58, Ls.2-11.) Warden affirmed that he understood the charge and pleaded guilty. (Id., p.58, Ls.12-20.)

Upon request, the state offered its factual basis:

[T]he State's evidence would be as presented at the trial of this matter that resulted in a hung jury, but the State evidence [sic], that the defendant was, on or about May 1st, 2013, was driving or in actual physical control of a motor vehicle, being a pickup we identified at trial, 1992 pickup bearing license plate number [REDACTED] upon State Highway 13, and that that was a public highway maintained by the State of Idaho Transportation Department, again, as the proof submitted at trial. And that at that time the defendant had a blood alcohol concentration of 0.21, and for that the State would be relying on the blood test that was taken in this matter. It was not presented at trial due to an unavailability of a witness, but that the information has been provided to Defendant and his Counsel in discovery.

(Id., p.59, Ls.2-18.) The state's evidence, as presented at trial, was that (1) it was only possible for vehicles to access the gravel pit area from State Highway 13 (Trial Tr., p.12, Ls.8-18; p.33, L.14 – p.34, L.8), and (2) that witnesses had in fact seen Warden

³ North Carolina v. Alford, 400 U.S. 25 (1970).

come off of State Highway 13 when he drove into the gravel pit area (Id., p.35, L.25 – p.36, L.16; p.51, Ls.3-15). The crime with which Warden was charged, and to which Warden pleaded, specifically related to his driving under the influence on State Highway 13, not his driving in the gravel pit area.

Second, were this Court to reach Warden's question of whether rights-of-way are encompassed within the definition of "highways and roads," it should determine that they are. This is an issue of statutory interpretation, which is given free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004). The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010). Because "the best guide to legislative intent" is the words of the statute, the interpretation of a statute must begin with the literal words of the statute. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). Where the statutory language is unambiguous, a court does not construe it but simply follows the law as written. McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006).

Idaho Code § 49-109(5) defines the term "highway." The definition for "highway" is unambiguous and expressly includes

the entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public for vehicular travel, with jurisdiction extending to the adjacent property line, including sidewalks, shoulders, berms *and rights-of-way not intended for motorized travel*.

(Emphasis added.) Therefore, even had the state charged Warden with driving under the influence *in the gravel pit right-of-way* of State Highway 13 (which it did not), the district court would still have had subject matter jurisdiction over the charge.

Under Idaho Code § 67-5101, Idaho has jurisdiction in Indian affairs over traffic offenses occurring on the highways and, under Idaho Code § 49-109(5), rights-of-way constitute part of the highway. Under any theory of this case, the district court had subject matter jurisdiction over the crime charged. This Court should therefore affirm Warden's conviction for driving under the influence.

CONCLUSION

The state respectfully requests that this Court affirm Warden's conviction for driving under the influence.

DATED this 13th day of June, 2016.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of June, 2016, served two true and correct copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

VICTORIA A. OLDS
IDAHO COUNTY PUBLIC DEFENDER
204 N. MEADOW ST.
GRANGEVILLE, ID 83530

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd